

DOGM
MINERALS PROGRAM
FILE COPY

4/27/95

Dear Leeds Silver Reclamation Team Members:

Please find attached my draft response to Jerry Glazier's April 18 letter. I decided to write a response to the letter combined with a summary of the April 20 conf. call.

Please feel free to comment and make suggestions. I particularly want to ensure that I have accurately stated the facts, and the positions of UDOGM and UDEQ.

Thanks for your help with this. I would like to send the letter to Glazier no later than May 3. If you would like to discuss it with me, my number is (303) 294-7037.



DRAFT COPY
4/27/95 10:57am

Ref: 8HWM-ER

Mr. Jerry Glazier
President
5M, Incorporated
P.O. Box 752
279 West State Street
Hurricane, UT 84737

Dear Mr. Glazier:

I received via first class mail on April 20, 1995, your letter to me which is dated April 18, 1995. You and I discussed the contents of this letter on April 19, after the Utah Department of Environmental Quality (UDEQ) sent its copy of the letter to me via facsimile. I want to reiterate my verbal responses to several issues you raised in the letter and in our telephone conversation, and I want to summarize the subsequent conference call held with you on April 20.

In your letter, you allege that EPA has refused to negotiate or consider any alternative cleanup plans which 5M, Inc. (5M) wishes to propose. On the contrary, EPA has repeatedly expressed its willingness to engage in discussions with you regarding the levels of contamination at the Leeds Silver Reclamation site (Site), the threats posed by the contamination at the Site, and the proposed cleanup plans which EPA has jointly developed with UDEQ, the Utah Department of Oil, Gas, and Mining (UDOGM), the U.S. Bureau of Land Management (BLM), and the U.S. Bureau of Reclamation (BOR). EPA has invited you to submit alternative plans and to submit your comments on the cleanup plan described in the Action Memorandum dated December 7, 1994.

INSERT INFO. FROM PETE ABOUT MEETINGS AND CONVERSATIONS HE HAD WITH GLAZIER.

In a telephone conversation on February 13, 1995, we discussed the proposed removal action, and you requested that EPA negotiate the action with you. I explained that EPA could negotiate the work to be done within the context of our negotiations for an Administrative Order on Consent (AOC). You expressed a desire to negotiate and meet with EPA. I encouraged you to submit your alternative cleanup proposals for the Site and any comments you wanted to make regarding the plan outlined in the Action Memorandum which was provided to you via facsimile on February 13. I told you to expect to receive the proposed AOC very soon. During the next two weeks, EPA did not receive any submittal of comments or proposed cleanup alternatives from you.

On February 28, 1995, EPA transmitted to you a draft AOC which included a statement of the cleanup work at the Site. EPA suggested that you contact us to arrange a meeting to discuss the AOC and the necessary cleanup work. In your letter of March 14, 1995, you stated the AOC language was unacceptable, and you did not submit any alternative cleanup plans for EPA's consideration.

During a telephone conversation on March 15, 1995, you expressed to me that you wanted to meet with EPA to negotiate. EPA immediately began trying to arrange such a meeting with you, UDEQ, UDOGM, BLM, and BOR. As you can imagine, arranging the logistics and coordinating the various schedules of all the parties was difficult. You indicated to us that you could not commit to a firm date and location until after your attorney returned to the United States on or about April 3, 1995. On or about April 5, 1995, all of the parties agreed to meet on April 12, 1995, in St. George, UT, in your attorney's office, or in 5M, Inc.'s, offices in Hurricane, UT. You were to let EPA know if your attorney's conference room would be available for the meeting.

EPA called you on Monday, April 10, 1995, to request that the meeting be rescheduled because our key technical project manager, On-Scene Coordinator, Peter Stevenson, was to be a potential witness in a court proceeding in Casper, WY, on April 12, a circumstance which developed on Friday, April 7. You expressed relief that we wanted to reschedule the meeting because you said there had been a death in your family or close relations and you could not attend the April 12 meeting. During that conversation, you agreed to meet in Salt Lake City on April 20, 1995.

As I expressed to you in our conversation on April 19, 1995, EPA was dismayed that your letter of April 18, indicated you were no longer willing to meet with EPA on April 20. You indicated that you were willing to talk via conference call and that you had not retained legal counsel. You stressed both in your letter and in our conversation, that you wanted to work directly with the State agencies. I committed to arrange the conference call including all of the State agencies involved for 10:00 a.m. on April 20, 1995.

EPA consistently represented to you that the purpose of the April 20 meeting, subsequently a conference call, would be to discuss the technical aspects of the Site, to explore the cleanup options including your proposals which had not yet been submitted to EPA, and determine either that 5M, Inc., would conduct the cleanup pursuant to a negotiated AOC or that EPA would conduct the cleanup with Site access granted by 5M, Inc.

In your letter you also allege that EPA is attempting to mandate to the Utah State agencies the cleanup of the Site. Nothing could be further from the truth. The Utah Department of Environmental Quality formally requested that EPA evaluate the Site for a removal action in January, 1992. Since that time, EPA has worked very closely with UDEQ, UDOGM, BLM, and BOR to evaluate the hazards at the Site and to jointly develop an appropriate cleanup plan to address the public health and environmental threats.

This collaborative effort and partnership between the Federal and State agencies was demonstrated during our conference call which convened on April 20, 1995, at 10:00 a.m. The participants in the conference call were: yourself, William Sorenson, and Joe Ipson for 5M, Inc.; Steven Thiriott, Jason Knowleton, Matt Croft, and Larry Mise for UDEQ; Lowell Braxton and Wayne Hedberg for UDOGM; Mike Christianson and Gordon Bell for BOR; Craig Zufelt and Alan Rabinoff for BLM; Peter Stevenson, Jim Rhodes, Mia Wood, Matt Cohn, and myself for EPA.

5M stated that it had new technology available to it which would allow it to reprocess what 5M views as still valuable materials on the leach pad at the Site. Two different technologies were discussed with some specific detail. 5M stated that it would take about 12 months to obtain the necessary equipment. You expressed your desire to continue operations at the Site, explained your efforts to obtain investors, and requested that you be allowed to work with the State agencies to restart operations.

EPA stated it has no interest in interfering in any way with 5M's plans to operate in the future at the Site, and that EPA has faith the UDEQ and UDOGM would ensure any future operations would be environmentally sound. However, EPA, its State and Federal partners are committed to addressing the public health and environmental threats at the Site. EPA offered that 5M could proceed in a phased manner with the cleanup, dealing with all of the immediate threats now such as ensuring Site security, addressing the ponds, disposing of the PCB transformers and contaminated soils, and disposing of the buried containers. To address the leach pad as a continuing source of releases of hazardous substances, a temporary cap could be installed which would allow 5M enough time to apply for all the necessary permits from UDOGM and UDEQ, and would allow 5M to obtain the new equipment to begin operations to reprocess the leach pile in 6 to 12 months. In your letter of April 18, you raised the issue of a contaminated groundwater well. EPA is not attempting to remediate contaminated groundwater in this removal action, but rather EPA is addressing cleanup of the potential sources of groundwater contamination.

Both in your letter of April 18, and during the conference call, 5M requested that EPA withdraw the designation of its property as "wetlands and a Superfund site." EPA explained that the Site has not been proposed for the National Priorities List (NPL), but that Superfund authorities were being used to address the Site. EPA also explained that there has not been an official, regulatory designation of wetlands applied to the property. However, because an area on the Site has been identified as meeting the criteria for a wetland, EPA must treat the area as a wetland. EPA emphasized that this wetland area need not prevent future operations at the Site. It just means that a Clean Water Act section 404 permit would be required.

UDOGM briefly reviewed the mine permitting history of the Site including it's efforts to work with 5M on Site reclamation. The reclamation bond was forfeited on July 21, 1987. UDOGM stated its

commitment to using the bond money to complete reclamation efforts at the Site which are different than the necessary cleanup to address releases of hazardous substances and the public health and environmental threats. UDOGM expressed its appreciation for 5M's participation in the Abandoned Mine Lands (AML) project, but UDOGM further explained that the AML project deals with safety hazards such as filling in shafts. It does not address the types of environmental and public health threats presented by the Site. UDOGM further stated that it views the mining operations in 5M's existing mining plan to be concluded, and that any future proposed operations at the Site would be required to go through a new permitting process which would include a new mining plan and bond. This permitting process could take from 4 to 6 months. *(6-9) more likely*

UDEQ, Division of Water Quality, discussed the existing heap leach at the Site. Based on a thorough search of its files, UDEQ could find no record of 5M ever having a construction permit for the leach pad. It was acknowledged that regulations have changed in the years since 5M began operations, but that the existing leach pad structure does not comply with the regulations and could not be retrofitted to comply. Although the new technology which 5M presented would not include the leach pad, similar water quality issues were applicable. Any future proposed operations would require new permits.

UDEQ, Division of Environmental Response and Remediation, discussed its involvement at the Site beginning in 1986, when a preliminary assessment was conducted. Samples were collected at the Site in 1990-91 during a site screening investigation. UDEQ identified the release of hazardous substances and potential health threats at the Site, and requested that EPA's Emergency Response Branch evaluate the Site for a removal action in 1992. UDEQ restated its commitment to a cleanup of the Site which would address the public health and environmental threats.

You requested that EPA withdraw from the Site and that 5M be allowed to work directly with the State agencies. EPA explained that EPA was asked by Utah to participate in the Site cleanup, and that EPA and Utah are partners in cleaning up the Site having worked jointly to develop the cleanup plans. EPA is the lead agency for this cleanup in partnership with Utah and the other Federal agencies.

EPA asked whether 5M is willing to conduct the phased removal action under an AOC while applying for the necessary State permits to restart operations. Some of the terms of the AOC are negotiable and minor changes could be made. You stated that the terms of the AOC were unacceptable to 5M and that major changes would be needed. 5M would not accept EPA's offer.

EPA requested that 5M provide access to the Site to allow the cleanup to proceed. You stated that, "As the paperwork has come to us at this time, we can not agree to allow you access." EPA stated that it views that statement to be a denial of access. You said that was not what you

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meant, rather that you wanted to negotiate. I explained that EPA always seeks to obtain consensual access to a Site, but that if consent is not possible, access will be sought by other means. Those other means include the issuance of a Unilateral Administrative Order for Access, and, if necessary, the filing of a case in Federal District court to obtain court ordered access.

You responded that 5M would consider whether to grant access. I asked that 5M respond by close of business on April 21, with its terms for granting access. You were informed that if EPA did not hear from 5M on April 21, EPA would proceed with next steps to obtain access.

As of the date of this letter, you have not responded to EPA's request for site access. Therefore, please be informed that EPA is proceeding in its efforts to obtain access to the Site through other enforcement mechanisms.

EPA encourages you to continue to communicate with us. We appreciate the discussions of April 20, 1995.

Sincerely,

Sharon L. Kercher, Chief
Removal Enforcement Section

cc: Conf. Call Participants
UT Congressional Delegation
Met Johnson
etc.

FCD: April 26, 1995, slk, slk, F:\DATA\WP\orders\response